

**STATE BOARD OF EQUALIZATION**

(916) 322-3684

March 7, 1986

Mr. [X]

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Re: [Z]

Dear Mr. [X]:

This is in reply to your letter dated January 14, 1986. You request our opinion as to the correct application of tax to the sale of "Stay Fit Nutri-Tabs" and "Stay Fit" powdered formula. You have provided labels from these two products for our review.

The label for "Stay Fit Nutri-Tabs" indicates that the product consists of vitamin enriched "chewable tablets." The suggested use of the tablets is as a supplement to or a replacement for the "Stay Fit Shake" and the label indicates the product can be used for a weight loss program. Finally, the label indicates that there are 60 calories and four grams of protein in each serving of six tablets.

The label for "Stay Fit" powdered formula indicates that the product "contains the elements necessary for proper nutrition including vitamins, minerals, herbs and hipo-aids." The product is to be mixed with non-fat milk or unsweetened juice to make a "shake" like drink. The label indicates that the product can be used, in conjunction with other food products (fish, poultry, vegetables), for a weight loss program. Finally, the label indicates that there are 60 calories and 10 grams of protein in each serving.

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this state unless such sale or use is otherwise exempt from taxation by statute (Rev. & Tax. Code §§6051 and 6201).

Pursuant to section 6359 of the Revenue and Taxation Code and Sales and Use Tax Regulation 1602(a), tax does not apply to the sale or use of “food products” for human consumption. As provided for under subparagraph (a)(5) of Regulation 1602, the term “food products” does not include:

“any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and to any such product (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one of more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake

In determining whether the product falls within category (B), it is important whether the manufacturer has specially mixed or compounded ingredients for the purpose of providing a high nutritional source. For example, protein supplements and vitamin pills are taxable as food supplements.”

Furthermore, Regulation 1602(a) (5) provides that tax does not apply to:

“...any such products which...are complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals and food providing adequate caloric intake. An example of the latter is a food daily providing the user with the following:

1. 70 grams of high quality protein
2. 900 calories
3. Minimum daily requirements as established by the regulations of the Federal Food and Drug Administration...”

It is our opinion that both “Stay Fit Nutri-Tabs” and “Stay Fit” powdered formula do not qualify as “food products” as that term is defined under Regulation 1602. Although the labels from these products do not specifically state that the products are food supplements or adjuncts, the labels nevertheless do indicate that these products are designed to encourage weight loss in the user by decreasing the caloric intake (Reg. 1602(a)(5)(B)).

Furthermore, both “Stay Fit Nutri-Tabs” and “Stay Fit” powdered formula do not provide the user with a sufficient amount of calories and protein in the recommended daily dosage to qualify as a nontaxable “complete dietary food” under Regulation 1602. In our view, tax applies to the sale or use of “Stay Fit Nutri-Tabs” and “Stay Fit” powdered formula since these products

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are sold in powdered and tablet form as dietary supplements or adjuncts and are therefore not “food products” exempt from tax under Regulation 1602.

If you have any further questions, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe  
Tax Counsel

RJS:sr